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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

Application Number: 10/647,814
Filing Date: August 25, 2003
Appellant(s): WANG, CHENG CHUNG

FEB 15 2007

Group 3700

Nelson A. Quintero
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 8, 2006 appealing from the Office action mailed January 20, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

- 1) U. S. Serial No. 10/4549,690: Appeal Brief submitted on November 3, 2006.
- 2) U.S. Patent No. 6,793,469: United States District Court, District of Columbia, Case No. 1:04 CV 01785, *Intex Recreation Corp. v. Team Worldwide Corporation*, pending.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,794,289	WORTMAN	8-1998
5,249,319	HIGGS	10-1993
5,279,545	INFANTE	3-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Wortman et al (USPN 5,794,289).

Wortman et al teach an inflatable product (see the assemblies shown in Figs. 1 and 15) including: an inflatable body (30), a socket (63, Figs. 15-17) built into the inflatable body (30), an electric pump, including a pump body (59) and an outlet (65), connected (69) to the socket to pump the inflatable body, wherein the pump body is wholly or partially located in the socket (Figs. 15-17); and a connector (61) provided at a predetermined position of the electric pump for connecting an external power to actuate the electric pump.

Claims 1, 2, 5, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Higgs (USPN 5,249,319).

Higgs teaches an inflatable product (Note Figs. 1-3) including: an inflatable body (3), a socket (22) built into the inflatable body (30), an electric pump (50/52), including a pump body (24) and an outlet (30), connected to the socket (see Fig. 3 which shows the pump 24 connected to the socket 22) to pump the inflatable body, wherein the pump body is wholly or partially located in the socket (Fig. 3); and a connector (12) provided at a predetermined position of the electric pump for connecting an external power to actuate the electric pump. Higgs further teaches that the air outlet is connected to the inflatable body via the socket (60) and a on/off switch (40).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higgs in view of Infante (USPN 5,297,545).

As discussed above Higgs discloses an inflatable product including an inflatable body, a socket built into the inflatable body, an electric pump having a pump body wholly or partially located within the socket and a switch. Higgs does not disclose a

waterproof switch. Infante, disclosing a compressor (32), specifically teaches a waterproof switch (38) to turn the compressor on and off. It was old and well known in the art of pump fabrication that using an ordinary waterproof switch advantageously facilitated safe operation of the unit. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have used the waterproof switch taught by Infante, in the pump disclosed by Higgs, to have advantageously facilitated safe operation of the unit.

(10) Response to Argument

The first argument that the appellant makes with regards to the rejections set forth under 35 USC 102(b) over Wortman is what the correct definition of an "inflatable body" is. In the first sentence of the last paragraph on the bottom of page 3 of the Appeal Brief (hereafter A.B.) the appellant states the "(a)lthough the term "inflatable body" is not expressly defined in the specification, it is used clearly in its ordinary and customary sense, i.e. a body that is substantially airtight and expands when filled with air or other gas". The appellant then goes on to unsuccessfully try and justify the inclusion of the limiting phrase "substantially airtight" into the definition of an "inflatable body".

Determining the correct definition of this claim limitation is the central issue in determining if the applied references read on the elected claims. The appellant is correct in noting that the specification does not expressly define what this term means. Therefore, in accordance with MPEP 2111, the claim term is presumed to have the

ordinary and customary meaning attributed to it in the art. The examiner disagrees with the applicant's definition of "inflatable body". In the paragraph spanning pages 3 and 4 of the A.B. the appellant notes that the embodiments of the *specification* are air beds and that they are air tight and expand when filled with gas. The applicant states that "these are without question the characteristics of airbeds" (also a position which will be shown to be incorrect below). The applicant goes on to give definitions of "inflatable" from the *American Heritage Dictionary of the English Language, 4th Edition* and from *Random House Webster's Unabridged Dictionary, Second Edition*. The examiner here adds the definition of inflate from *Webster's New World Dictionary, Third College Edition*, which defines "inflate" as: "to blow full or swell out as with air or gas; distend; expand; dilate"; and defines "inflatable" as an adjective meaning: "that can be inflated". What is notable in all of the dictionary definitions cited by the appellant and the examiner is that **nowhere is the term airtight mentioned**. The "airtight" part of the definition of "inflatable body" has been piggybacked onto the ordinary and customary definition of "inflatable body" by noting that the specification is directed to airbeds and also by noting the *American Heritage Dictionary* gave as an example an inflatable mattress in its definition of "inflatable".

It is the examiner's position however that the claims are directed to an "inflatable product" and not an airbed. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, all airbeds are not "airtight" as is so strenuously asserted by the appellant in the A.B.. One needs

to look no further than the prior art hospital bed mattresses discussed in the BACKGROUND OF THE INVENTION section of applied Higgs patent. At col. 1 lines 34-36 note that in prior hospital mattresses "a plurality of air sacs are inflated and air is permitted to leak out through small holes in the sacs."

Clearly, the limitation "airtight" does not form part of the ordinary and customary definition of an "inflatable body", whether the body is an airbed or not.

The examiner strongly asserts that the correct definition of an "inflatable body" is: a body that expands when filled with air or other gas. When this definition is applied in determining the scope of the claims each of the appellant's remaining arguments fail to overcome the fact that Wortman et al and Higgs anticipate the claimed invention.

From pages 5 through 14 of the Appeal Brief the appellant makes what the examiner will summarize as the applicant's second argument. The argument is predicated upon the applicant's erroneous definition of "inflatable body". This argument is that instead of the mattress 30 of Wortman or the mattress 3 of Higgs being the inflatable bodies, as set forth in the rejections of August 2005 and January 2006, and in the rejections above, it is inflatable cushions 44 and 46 of Wortman and the inflatable air chamber 28 of Higgs which are the inflatable bodies. At page 5 lines 6 and 7 the appellant says: "(t)he inflatable bodies disclosed by Wortman are inflatable cushions 44 and 46". The appellant then goes on to present a list of examples from the reference where the cushions are referred to (pages 5 and 6). On page 11 the appellant states: "As with Wortman, Appellant recognizes that Higgs does not in fact disclose an

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'inflatable body' as recited in the claims. The inflatable body disclosed by Higgs is inflatable air chamber 28." A list of examples from the Higgs reference where the air plenum or chamber is referred to (pages 5 and 6) is then presented.

It is the examiner's position that these arguments do not address the rejections repeatedly made against the claims and should be dismissed out of hand. Respectfully, what the appellant is attempting to do is to rewrite the rejections so that they comport with his erroneous definition of "inflatable body". Throughout pages 5-14 of the A.B. the arguments are made based upon elements, other than those set forth in the rejection, being the inflatable body. For example:

With regards to Wortman, at page 6 lines 14 and 15, "the recess 58,60 that contains the electric pump 59 is in no way 'built in' either one of inflatable cushions 44, 46".

At page 6, line 18 "notch 63 is also not 'built in' either one of inflatable cushions 44, 46".

On page 12 lines 3-5, with respect to Higgs the A.B. sets forth that "the blower housing 24 in hollow compartment 22 is adjacent to, but not built into the inflatable chamber 28."

In the last line of page 13 the appellant "acknowledges that the inflatable air chamber 28 of Higgs is an 'inflatable body'. "

Furthermore, throughout pages 5-14 the appellant tries to define the mattress 30 of Wortman as being wholly defined by the crib structure and the cushions 44,45 mounted therein. The A.B. then goes on to explain that the cribs are not airtight

structures. At page 7 lines 15-19 note that "mattress 30 taken as a whole (i.e., the aggregate structure defined by at least the combination of cribs 34,36 and inflatable cushions 44 and 46) is not an 'inflatable body'. Specifically, because of the openings in cribs 34, 36, mattress 30 is not a substantially airtight structure, and would not expand when filled with gas." A similar argument is made with regards to Higgs at page 13, the first full paragraph.

Respectfully, it is the examiner position that these arguments do not address the rejections which have been presented throughout prosecution. The appellant has created an erroneous definition of "inflatable" and applied this definition to the Wortman et al and Higgs references as if the rejections were made as the applicant sets forth. The appellant then goes on to argue against the rejections which have been created by applying the erroneous definition of "inflatable body" to the elements he has chosen to represent the inflatable bodies. The arguments on pages 5-14 do not address the rejections set forth and are therefore not persuasive. By repeatedly arguing against the elements which he states are the inflatable bodies in the references, instead of arguing against the elements which were clearly stated as being the inflatable bodies in the applied rejections, the appellant has created circular and confusing arguments which distract from the rejections on the record. The erroneous definition of "inflatable body" is needed in order to redefine what the "inflatable bodies" of the Wortman et al and Higgs references are. The examiner strongly argues that the erroneous definition of "inflatable body" should not be used to determine the scope of the claims since this definition does

not agree with it's common and ordinary meaning in the art. The definition of an "inflatable body" being a body that expands when filled with air or other gas should be accepted and applied as set forth in the applied rejections. Furthermore, the appellant's redefinition of the rejections should be dismissed and the rejections as set forth by the examiner, respectfully, should be sustained.

It is the examiner's position that the correct interpretation of the common and ordinary meaning of "inflatable body" is a body that expends when filled with air or other gas. Furthermore, the applied rejections clearly show that the Wortman et al and the Higgs mattresses disclose and anticipate the claimed subject matter. Wortman et al clearly discloses a mattress which is an "inflatable body". When the mattress 30 of Wortman et al is taken as a whole (i.e. for example, the cribs 34,36, the cushions 44, 46 and the cover 48 which wraps around it, along with all the other structure) the mattress is an inflatable body which when filled with air expands (see Figs. 25, 26 and 12-14). Higgs also discloses a mattress 3 which is an inflatable body. Importantly, Higgs specifically and clearly states that his mattress is inflatable at col. 1 lines 60-62 when he states that a "blower is located within the housing and coupled to the air plenum for exhausting air into the air chambers thereof so as to inflate the mattress." The examiner will repeat this for emphasis. Higgs states he will "**inflate the mattress**".

With regards to the rejection of claim 6 over Higgs in view of Infante the appellant states that for the same reasons advanced in connection with claims 1 and 2 the

rejection under 103 fails to teach the claimed invention and notes that Infante does not overcome the supposed shortcomings of Higgs. For the reasons set forth above Higgs does anticipate claims 1 and 2 and the rejection of claim 6 in view of Infante is proper.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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